

United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

FAREED SEPEHRY-FARD,

Plaintiff,

v.

SELECT PORTFOLIO SERVICING, INC.,  
et al.,

Defendants.

Case No. 14-CV-05142-LHK

**ORDER GRANTING DEFENDANTS’  
MOTION FOR CONTEMPT; DENYING  
PLAINTIFF’S MOTION FOR RELIEF  
FROM JUDGMENT, PLAINTIFF’S  
MOTION TO STRIKE, PLAINTIFF’S  
MOTION TO RECUSE, AND  
PLAINTIFF’S MOTION FOR THE  
COURT TO CONFIRM JURSDICTION**

Re: Dkt. No. 61, 65, 66, 67, 75

On March 10, 2015, this Court declared Plaintiff Fareed Sepehry-Fard (“Plaintiff”) a vexatious litigant and imposed a pre-filing review requirement on Plaintiff for any action brought regarding the foreclosure of the property located at 18314 Baylor Avenue, Saratoga, California 95070. *Sepehry-Fard v. Select Portfolio Servicing, Inc.*, 2015 WL 1063070 (N.D. Cal. Mar. 10, 2015), ECF No. 58 (“Vexatious Litigant Order”). The Court also dismissed Plaintiff’s claims with prejudice and denied Plaintiff’s motion to recuse the undersigned. *Id.* The Clerk then closed the case file.

Defendants Countrywide Home Loans, Inc. (“Countrywide”) and Recontrust Company,

N.A. (“Recontrust”) now move to hold Plaintiff in contempt for violating the Vexatious Litigant Order. ECF No. 61. In response, Plaintiff has filed four motions: (1) a motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60; (2) a motion to strike the motion for contempt; (3) a motion to recuse; and (4) a motion for the Court to “confirm jurisdiction and to confirm jurisdiction over alleged defendants.” ECF Nos. 65, 66, 67, 75. Having considered the parties’ briefing, the relevant law, and the record in this case, the Court hereby GRANTS Countrywide’s and Recontrust’s motion for contempt, and DENIES Plaintiff’s four motions.

## **I. BACKGROUND**

### **A. Factual Background**

A full recitation of the facts of this case and Plaintiff’s litigation history is set out in the Vexatious Litigant Order. Therefore, the facts and procedural history are recounted here only to the extent necessary.

In September 2005, Plaintiff refinanced the real property at 18314 Baylor Avenue, Saratoga, California 95070 (the “Property”) with two mortgage loans (the “Notes”). *See* Vexatious Litigant Order at 2. The deeds of trusts recorded on September 26, 2005 identify Countrywide as the “lender,” Recontrust as the “Trustee,” and Mortgage Electronic Registration Systems, Inc. (“MERS”) as the “beneficiary.” *Id.* Thereafter, MERS recorded assignments whereby The Bank of New York Mellon fka The Bank of New York, as Trustee for the Certificateholders CWALT, Inc. Alternative Loan Trust 2005-62 Mortgage Pass-Through Certificates, Series 2005-62 (“BONY”) became the beneficiary of the Notes. *Id.* at 3.

Eventually, Plaintiff paid off one loan, and a full reconveyance was recorded on September 25, 2012. *Id.* Plaintiff, however, fell behind on repaying the other loan. *Id.* As a result, a notice of default was recorded on February 18, 2010. That notice was rescinded on July 22, 2010. *Id.* It appears that no foreclosure ever took place, and Plaintiff is preparing to close on a sale of the Property. *See* ECF No. 76, Countrywide’s and Recontrust’s Supplemental Declaration (“Defs. Supp. Decl.”), Ex. E.

**B. The Instant Litigation**

On November 20, 2014, Plaintiff, proceeding pro se, filed this case against Countrywide and Recontrust, in addition to Defendants Select Portfolio Servicing, Inc. (“SPS”), MERS, and BONY (collectively, “Defendants”). ECF No. 1. The gravamen of Plaintiff’s 122-page complaint (over 600 pages including exhibits), liberally construed, is that Defendants illegally threatened to foreclose on the Property.

This case constituted Plaintiff’s eighth foreclosure-related lawsuit and Plaintiff’s fourth attempt to stop foreclosure on the Property. *See Sepehry-Fard v. Select Portfolio Servicing, Inc. et al.*, No. 14-CV-05142-LHK (N.D. Cal.); *Sepehry-Fard v. Nationstar Mortg. LLC et al.*, No. 14-CV-03218-LHK (N.D. Cal.); *Sepehry-Fard v. Countrywide Home Loans, Inc. et al.*, No. 13-CV-05769-BLF (N.D. Cal.); *Sepehry-Fard v. GreenPoint Mortg. Funding, Inc. et al.*, No. 13-CV-04535-EJD (N.D. Cal.); *Sepehry-Fard v. Bank of N.Y. Mellon et al.*, No. 12-CV-01260-LHK (N.D. Cal.); *Sepehry-Fard v. Aurora Bank FSB et al.*, No. 12-CV-0871-EJD (N.D. Cal.); *Sepehry-Fard v. Bank of N.Y. Mellon et al.*, No. 1-11-CV-210028 (Cal. Super. Ct.); *Sepehry-Fard v. Aurora Bank FSB et al.*, No. 1-11-CV-209804 (Cal. Super. Ct.).<sup>1</sup> Plaintiff’s four other foreclosure-related lawsuits involve Plaintiff’s other property located at 12309 Saratoga Creek Drive, Saratoga, California 95070. Plaintiff’s lawsuits surrounding that property raise claims and theories of liability virtually identical to those that Plaintiff has raised with respect to the Property. Plaintiff has not prevailed in any of these eight lawsuits.

In the instant case, the Court granted Defendants’ motion to dismiss with prejudice on March 10, 2015. *See Vexatious Litigant Order* at 7–10. The Court concluded that Plaintiff’s claims were barred by res judicata because Plaintiff could have—and did—bring claims in his

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<sup>1</sup> In addition to these eight, Plaintiff has filed three other federal lawsuits in this district: *Sepehry-Fard v. Oregon*, No. 14-CV-02444-EJD (N.D. Cal.) (suit to void a criminal conviction); *Sepehry-Fard v. Dep’t Stores Nat’l Bank et al.*, No. 13-CV-03131-WHO (N.D. Cal.) (suit against debt collectors); *Sepehry-Fard v. Mercedes-Benz Fin. Servs.*, No. 13-CV-02784-BLF (N.D. Cal.) (suit against collector on automobile loan).

1 prior federal lawsuits based on the same allegations regarding the alleged illegal foreclosure of the  
2 Property. *Id.*

3 In the same order, the Court denied a motion by Plaintiff to recuse the undersigned. The  
4 Court noted that the Court “has gone to great lengths to ensure that Plaintiff, as a pro se litigant,  
5 has been afforded due process. The Court has liberally construed Plaintiff’s complaints, referred  
6 him to self-help legal services, and granted him leave to amend where appropriate.” *Id.* at 11. The  
7 Court concluded that “Plaintiff provides no basis for a reasonable observer to find that the  
8 undersigned has displayed any bias or prejudice stemming from an extrajudicial source.” *Id.*

9 Lastly, the Court declared Plaintiff a vexatious litigant. First, the Court explained that  
10 Plaintiff was on notice that he may be declared a vexatious litigant and was able to oppose the  
11 declaration. *Id.* at 13. Second, the Court exhaustively detailed Plaintiff’s eight foreclosure-related  
12 lawsuits regarding Plaintiff’s two properties, and concluded that all eight have all been “patently  
13 without merit.” *Id.* at 3–5, 14–16. Third, in light of Plaintiff’s history of filing meritless lawsuits  
14 and the “plethora of frivolous motions” filed in those lawsuits, the Court found that Plaintiff’s  
15 litigation against Defendants has been frivolous and harassing. *Id.* at 16–18. The Court further  
16 determined that Plaintiff “without question” has “caused unnecessary expense to his opposing  
17 parties and has posed an unnecessary burden on the courts.” *Id.* at 18 (alterations omitted).  
18 Finally, the Court found that “Plaintiff’s erratic, hostile behavior towards Defendants only  
19 exacerbates the prejudice they have endured.” *Id.*

20 Given “Plaintiff’s history of rule-breaking, increasingly hostile behavior, and relentless  
21 filing of frivolous lawsuits and motions,” the Court concluded that a narrowly tailored pre-filing  
22 requirement should be imposed on Plaintiff. *Id.* at \*11. Accordingly, the Court ordered:

23 Fareed Sepehry-Fard must obtain leave before filing any action in the United States  
24 District Court for the Northern District of California related to the foreclosure on  
25 his property located at 18314 Baylor Avenue, Saratoga, California 95070. The  
26 Clerk shall forward any such complaint submitted by Plaintiff to the general duty  
judge for pre-filing review. This order extends to actions originally brought in state  
court and removed to this district, and to adversary proceedings in this district’s  
bankruptcy court. Any violation of this order will expose Plaintiff to a contempt

hearing and appropriate sanctions, and any action filed in violation of this order will be subject to dismissal.

*Id.* at \*12.

Plaintiff did not appeal the Court's dismissal of Plaintiff's claims or the Court's declaration that Plaintiff is a vexatious litigant.

### **C. Alleged Violations of the Vexatious Litigant Order**

Since the dismissal of the instant action, and apparently undeterred by the Vexatious Litigant Order, Plaintiff has filed numerous actions and motions related to the Property. Countrywide and Recontrust specifically highlight four actions against them, described below.

#### **a. Plaintiff's Adversary Proceeding**

On May 6, 2015, Plaintiff filed *Sepehry-Fard v. Select Portfolio Servicing, Inc.*, No. 15-05048 (Bankr. N.D. Cal. 2015), an adversary proceeding against SPS in the U.S. Bankruptcy Court for the Northern District of California. ECF No. 62, Countrywide's and Recontrust's Request for Judicial Notice ("Defs. RJN"), Ex. 1. On May 11, 2015, Plaintiff amended the complaint to name Countrywide and Recontrust as defendants. *Id.* Ex. 2. The adversary proceeding revolves around the validity of Countrywide's loan against the Property.

On August 5, 2015, the Bankruptcy Court dismissed the adversary proceeding because, in part, "it appears that [Plaintiff] violated the district court's vexatious litigant order by initiating this adversary case." *Id.* Ex. 3. Undeterred, Plaintiff filed a motion for reconsideration, which the Bankruptcy Court denied on November 4, 2015. *Id.* Ex. 4. In the November 4, 2015 order, the Bankruptcy Court again noted that Plaintiff "did not assert that he had complied with [the Vexatious Litigant Order's] prefiling requirement." *Id.* Still undeterred, on November 10, 2015, Plaintiff appealed the Bankruptcy Court's order of dismissal. *Id.* Ex. 5. The U.S. Bankruptcy Appellate Panel of the Ninth Circuit dismissed Plaintiff's appeal on July 29, 2016 because Plaintiff failed to pay the filing fees. Defs. Supp. Decl. Ex. B.

#### **b. Plaintiff's Motion to Set Aside the Judgment in *Sepehry-Fard II***

On February 19, 2016, Plaintiff moved to reopen and set aside the judgment in the federal

case *Sepehry-Fard v. Countrywide Home Loans, Inc.* (“*Sepehry-Fard II*”), No. 13-CV-05769-BLF (N.D. Cal). Defs. RJN Ex. 8. That case, which sought to quiet title to the Property, had been dismissed by U.S. District Court Judge Beth Labson Freeman for lack of subject matter jurisdiction almost two years prior, on June 13, 2014. *Id.* Ex. 7. In the motion to set aside the judgment, Plaintiff argued that the loan against the Property is void and Plaintiff owes no loans. In addition, on February 26, 2016, Plaintiff moved ex parte for a temporary injunction and restraining order barring the sale of the Property. No. 13-CV-05769, ECF No. 79.

Judge Freeman denied Plaintiff’s motion for a temporary restraining order on March 4, 2016, and denied Plaintiff’s motion to reopen the case and set aside the judgment on March 21, 2016. Defs. RJN Exs. 10, 11. On March 28, 2016, Plaintiff appealed Judge Freeman’s orders to the Ninth Circuit. *Id.* Ex. 12. On June 9, 2016, the Ninth Circuit denied Plaintiff’s application to appeal in forma pauperis because “the appeal is frivolous.” Defs. Supp. Decl. Ex. C. On July 7, 2016, the Ninth Circuit dismissed the appeal because Plaintiff failed to pay the filing fees. *Id.* Ex. D. On August 1, 2016, the Ninth Circuit denied four motions filed by Plaintiff on the grounds that the appeal had been dismissed, and Plaintiff had failed to pay the filing fees. No. 13-CV-05769, ECF No. 104. The Ninth Circuit ordered that “[n]o further filings will be entertained in this closed case.” *Id.*

### **c. Motions in Plaintiff’s Bankruptcy Proceeding**

Plaintiff has attempted to litigate issues related to the Property in Plaintiff’s bankruptcy proceeding, *In re Sepehry-Fard*, No. 16-50582 (Bankr. N.D. Cal. 2016). Specifically, on March 25, 2016, Plaintiff filed an ex parte motion in the bankruptcy case to compel SPS to modify Plaintiff’s debt on the Property. Defs. RJN Ex. 14. On March 28, 2016, the Bankruptcy Court declined Plaintiff’s motion to shorten time on the motion to compel because “it finds no basis to grant the relief requested” in the motion to compel. *Id.* Ex. 15. The next day, Plaintiff moved for reconsideration, *id.* Ex. 16, which the Bankruptcy Court denied on April 29, 2016, *id.* Ex. 17. At some point during the bankruptcy proceeding, Plaintiff also subpoenaed Countrywide and



1 Recontrust.

2 On May 12, 2016, Plaintiff appealed all Bankruptcy Court orders against him. *Id.* Ex. 18.  
3 On August 1, 2016, Plaintiff moved to dismiss all appeals. Defs. Supp. Decl. Ex. E. Pursuant to  
4 Plaintiff's request, the Bankruptcy Appellate Panel dismissed Plaintiff's appeals. *Id.* Ex. F.

5 **d. Plaintiff's New Federal Complaint**

6 On May 18, 2016, Plaintiff filed a complaint in federal district court related to the  
7 Property. *See Sepehry-Fard v. Select Portfolio Servicing, Inc.*, No. 16-MC-80112-EJD (N.D.  
8 Cal.). On May 23, 2016, U.S. District Judge Edward Davila reviewed the complaint pursuant to  
9 the pre-filing review requirement in the Vexatious Litigant Order. Defs. Supp. Decl. Ex. G.  
10 Judge Davila found that the complaint was "related to the foreclosure of the Baylor Avenue  
11 Property," as well as "duplicative of prior litigation instituted by Plaintiff and frivolous." *Id.*  
12 Accordingly, Judge Davila denied Plaintiff leave to file the complaint. *Id.*

13 On June 14, 2016, Judge Davila denied Plaintiff's "Administrative Motion to Vacate Void  
14 Order." No. 16-MC-80112, ECF No. 6. Judge Davila also denied Plaintiff's motion to recuse. *Id.*  
15 On June 22, 2016, Plaintiff appealed Judge Davila's June 14, 2016 order. No. 16-MC-80112, ECF  
16 No. 8. The appeal remains pending before the Ninth Circuit.

17 **D. The Instant Motions**

18 On May 18, 2016, Countrywide and Recontrust moved to hold Plaintiff in contempt for  
19 violation of the Vexatious Litigant Order, ECF No. 61, and filed a request for judicial notice, ECF  
20 No. 62. Rather than substantively oppose the motion for contempt, Plaintiff moved to strike the  
21 motion on June 1, 2016. ECF No. 66. That same day, Plaintiff filed a motion for relief from  
22 judgment under Federal Rule of Civil Procedure 60, ECF No. 65, as well as a motion to recuse the  
23 undersigned for bias, ECF No. 67. Plaintiff filed a request for judicial notice in support of the  
24 three motions. ECF No. 68.

25 On June 15, 2016, Countrywide and Recontrust opposed Plaintiff's three motions in an  
26

omnibus opposition.<sup>2</sup> ECF No. 71. MERS, SPS, and BONY joined the omnibus opposition on June 20, 2016. ECF No. 73. Plaintiff replied on June 22, 2016. ECF No. 74.

On June 24, 2016, Plaintiff filed an administrative motion to “confirm jurisdiction and to confirm jurisdiction over alleged defendants.” ECF No. 75. On August 5, 2016, Plaintiff filed a “Notice of Judicial Corruption Reported to Senate Judicial Committee” alleging misconduct by Ninth Circuit Court of Appeal Judges Richard Clifton and Paul Watford in a different case. ECF No. 77. Also on August 5, 2016, Countrywide and Recontrust filed a supplemental declaration with an update on the status of Plaintiff’s various lawsuits. ECF No. 76.

## II. JUDICIAL NOTICE

As a preliminary matter, the Court addresses the parties’ requests for judicial notice. Under Federal Rule of Evidence 201(b), the Court may take judicial notice of any fact that is “not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Proper subjects of judicial notice include “court filings and other matters of public record.” *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006).

Plaintiff requests judicial notice of the following documents: (1) a subpoena issued to the undersigned by the Bankruptcy Court; (2) affidavits by Plaintiff and three additional people alleging that the undersigned and Judge Davila are biased against Plaintiff; (3) a filing in Plaintiff’s bankruptcy proceeding; (4) loan documents related to the Property, including the Notes and Plaintiff’s payment history; (5) the docket in another case filed by Plaintiff; (6) court orders; and (7) Plaintiff’s “land patent as Quito Rancho.” ECF No. 68. The Court DENIES judicial notice of the four affidavits, as the facts within can not be “accurately and readily determined from

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<sup>2</sup> On June 22, 2016, Plaintiff moved to strike the opposition. ECF No. 74. Plaintiff argues that the opposition violates Civil Local Rule 7-5 because it is not accompanied by a declaration supporting the factual contentions therein. However, Plaintiff fails to identify what factual contentions he challenges. Moreover, the factual contentions in the opposition come from the record in this case or the judicially noticeable record. Thus, the opposition does not violate Civil Local Rule 7-5 and Plaintiff’s motion to strike is DENIED.



sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b); *see also City of Royal Oak Ret. Sys. v. Juniper Networks, Inc.*, 880 F. Supp. 2d 1045, 1060 (N.D. Cal. 2012) (finding a declaration was not subject to judicial notice). The Court also DENIES judicial notice of the documents related to “Quito Rancho,” as it is not clear from where these documents came, and certain pages of the documents are not legible. However, the Court GRANTS Plaintiff’s request for judicial notice in all other respects, as the other documents are matters of public record.

Countrywide and Recontrust request judicial notice of (1) complaints, motions, and notices of appeal filed by Plaintiff; and (2) court orders and dockets in other cases filed by Plaintiff. *See* Defs. RJN. Plaintiff does not oppose this request, and the Court finds these documents subject to judicial notice. *See Reyn’s Pasta Bella*, 442 F.3d at 746 n.6 (holding that “court filings and other matters of public record” are subject to judicial notice). Accordingly, the Court GRANTS Countrywide’s and Recontrust’s request for judicial notice.

In addition, the Court takes judicial notice of Exhibits A–G attached to Countrywide’s and Recontrust’s supplemental declaration filed on August 5, 2016. *See* Defs. Supp. Decl. These exhibits are recent court orders filed in Plaintiff’s other cases, as well as a motion filed by Plaintiff with the Bankruptcy Appellate Panel. These exhibits are the proper subject of judicial notice. *See Reyn’s Pasta Bella*, 442 F.3d at 746 n.6.

### III. DISCUSSION

The Court first examines Plaintiff’s motion for relief from judgment. The Court then considers Countrywide’s and Recontrust’s motion for contempt; Plaintiff’s motion to recuse; and lastly Plaintiff’s motion to “confirm jurisdiction and to confirm jurisdiction over alleged defendants.”

#### A. Plaintiff’s Motion for Relief from Judgment

Plaintiff moves pursuant to Federal Rule of Civil Procedure 60(b) for relief from the Court’s Vexatious Litigant Order. ECF No. 65. Under Rule 60(b), the Court may grant a motion for relief from judgment only upon a showing of (1) mistake, inadvertence, surprise, or excusable

neglect; (2) newly discovered evidence which by due diligence could not have been discovered before the court's decision; (3) fraud by the adverse party; (4) the judgment is void; (5) the judgment has been satisfied; or (6) any other reason justifying relief. Fed. R. Civ. P. 60(b); *Sch. Dist. 1J v. ACandS Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). "[M]ere disagreement with a court's order does not provide a basis for reconsideration." *Durkee v. Ford Motor Co.*, 2015 WL 1156765, at \*2 (N.D. Cal. Mar. 13, 2015) (citing *McDowell v. Calderon*, 197 F.3d 1253, 1256 (9th Cir. 1999)). Motions pursuant to Rule 60(b) "must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1).

Plaintiff moves for relief from judgment pursuant to subsections (1), (4), (5), and (6). ECF No. 65, at 8. However, because Plaintiff's motion was filed on June 1, 2016—more than a year after the March 10, 2015 Vexatious Litigant Order—Plaintiff may not seek relief under subsection (1). *See* Fed. R. Civ. P. 60(c)(1). Regardless, however, relief is not warranted under any subsection. Plaintiff does not show mistake, inadvertence, surprise, excusable neglect, satisfaction of the judgment, or voiding of the judgment. Nor does Plaintiff offer any new evidence or relevant legal authority that could not have been discovered with due diligence. Lastly, Plaintiff fails to present any other reason justifying relief, such as extraordinary circumstances. *See Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005) (noting that "extraordinary circumstances" justify reopening a final judgment under Rule 60(b)(6)). Indeed, Plaintiff does not challenge the Vexatious Litigant Order's conclusion that Plaintiff's claims are barred by res judicata, or the Vexatious Litigant Order's finding that Plaintiff has repeatedly filed harassing, frivolous lawsuits related to the Property. Accordingly, the Court DENIES Plaintiff's motion for relief from judgment.

## **B. Countrywide's and Recontrust's Motion for Contempt**

### **1. Plaintiff's Motion to Strike Countrywide's and Recontrust's Motion for Contempt**

Plaintiff moves to strike Countrywide’s and Recontrust’s motion for contempt pursuant to Federal Rule of Civil Procedure 12(f). ECF No. 66. Rule 12(f) provides that the Court “may strike from a *pleading* an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f) (emphasis added). The motion for contempt is not a pleading. *See* Fed. R. Civ. P. 7(a) (defining pleadings). Thus, Rule 12(f)—which applies only to “pleadings”—does not provide a basis for the Court to strike the motion for contempt. *See Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983) (“Under the express language of [Rule 12(f)], only pleadings are subject to motions to strike.”).

Moreover, although the Court has inherent power to strike filings, the Court sees no reason to strike the motion for contempt. *See Ready Transp., Inc. v. AAR Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir. 2010) (noting district courts have inherent power to strike a party’s filings).

Countrywide’s and Recontrust’s motion for contempt was filed in compliance with the Court’s Civil Local Rules. Plaintiff offers no reason why the motion should not be adjudicated on the merits. Accordingly, the Court DENIES Plaintiff’s motion to strike the motion for contempt.

## 2. Merits of Countrywide’s and Recontrust’s Motion for Contempt

Next, the Court considers Countrywide’s and Recontrust’s motion to hold Plaintiff in civil contempt for violating the Vexatious Litigant Order. ECF No. 61.

A district court has the inherent authority to enforce compliance with its orders through a civil contempt proceeding. *Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827–28 (1994). Civil contempt consists of a party’s disobedience to “a specific and definite court order by failure to take all reasonable steps within the party’s power to comply.” *Reno Air Racing Ass’n v. McCord*, 452 F.3d 1126, 1130 (9th Cir. 2006). The contempt “need not be willful; however, a person should not be held in contempt if his action appears to be based on a good faith and reasonable interpretation of the court’s order.” *Id.* (internal citations and quotation marks omitted). Substantial compliance also is a defense to civil contempt— “[i]f a violating party has taken all reasonable steps to comply with the court order, technical or inadvertent violations of the

order will not support a finding of civil contempt.” *Gen. Signal Corp. v. Donallco, Inc.*, 787 F.2d 1376, 1379 (9th Cir. 1986) (internal quotation marks and citation omitted). Thus, the party alleging civil contempt must demonstrate by clear and convincing evidence that (1) the contemnor violated a court order, (2) the noncompliance was more than technical or de minimis, and (3) the contemnor’s conduct was not the product of a good faith or reasonable interpretation of the violated order. *See United States v. Bright*, 596 F.3d 683, 694 (9th Cir. 2010); *Inst. of Cetacean Research v. Sea Shepherd Conservation Society*, 774 F.3d 935, 945 (9th Cir. 2014).

Here, Countrywide and Recontrust assert that Plaintiff has violated the Vexatious Litigant Order on multiple occasions. Plaintiff does not dispute that Plaintiff violated the Court’s order, but argues that the order is void. ECF No. 66. Among other reasons, Plaintiff contends that the Property is “within the boundary of a Spanish or Mexican land grant” and the Property can not be foreclosed upon unless the Court “continue[s] to declare war on REPUBLIC OF MEXICO, without any jurisdiction, whatsoever.” *Id.* at 13. The Court finds that Plaintiff has violated the Court’s Vexatious Litigant Order twice and that sanctions are warranted, as explained below.

First, Plaintiff’s May 6, 2016 adversary proceeding clearly violates the Vexatious Litigant Order. The order requires Plaintiff to “obtain leave before filing any action in the United States District Court for the Northern District of California related to the foreclosure on [the Property]” and specifically “extends to . . . adversary proceedings in this district’s bankruptcy court.” *See* Vexatious Litigant Order at 21. In contravention of the Vexatious Litigant Order, on May 6, 2016, Plaintiff filed an adversary proceeding regarding the foreclosure of the Property without seeking pre-filing review. Defs. RJN Ex. 1. Indeed, the Bankruptcy Court dismissed Plaintiff’s adversary proceeding based, in part, on its finding that “it appears that [Plaintiff] violated the district court’s vexatious litigant order by initiating this adversary case.” *See id.* Ex. 3. The Bankruptcy Court later denied Plaintiff’s motion for reconsideration, and again noted that Plaintiff “did not assert that he had complied with [the Vexatious Litigant Order’s] prefiling requirement.” *Id.* Ex. 4.

Although the Bankruptcy Court twice informed Plaintiff that the adversary proceeding was

1 in violation of this Court’s Vexatious Litigant Order, Plaintiff continued to pursue the proceeding  
 2 by filing an appeal. *See id.* Exs. 3, 4 (Bankruptcy Court orders informing Plaintiff that the  
 3 adversary proceeding violates the vexatious litigant order); *id.* Ex. 5 (Plaintiff’s notice of appeal).  
 4 In light of the Bankruptcy Court’s repeated admonitions that Plaintiff was in violation of the  
 5 Vexatious Litigant Order, the Court finds that Plaintiff’s disregard of the Vexatious Litigant Order  
 6 is willful and blatant.

7 As to the second violation of the Vexatious Litigant Order, on May 18, 2016, Plaintiff  
 8 attempted to file a complaint in federal district court related to the Property. Judge Davila found  
 9 that the complaint was barred by the Vexatious Litigant Order because the complaint was “both  
 10 duplicative of prior litigation instituted by Plaintiff and frivolous.” Defs. Supp. Decl. Ex. G.  
 11 Upon Judge Davila’s denial of Plaintiff’s motion for reconsideration, Plaintiff appealed. No. 16-  
 12 MC-80112, ECF No. 8. Thus, similar to Plaintiff’s adversary proceeding, Plaintiff continued to  
 13 pursue the litigation even after being expressly informed that Plaintiff was in violation of the  
 14 Vexatious Litigant Order. Plaintiff’s persistent and willful violations of the Vexatious Litigant  
 15 Order continue Plaintiff’s pattern of “repeatedly flout[ing] the rules” that this Court found in the  
 16 Vexatious Litigant Order. *See* Vexatious Litigant Order at 20 (describing Plaintiff’s “history of  
 17 rule-breaking”).

18 Countrywide and Recontrust contend that Plaintiff violated the Vexatious Litigant Order in  
 19 two additional cases. They first cite Plaintiff’s February 19, 2016 attempt to set aside the nearly  
 20 two-year-old judgment in *Sepehry-Fard II*. However, filing a motion to set aside judgment does  
 21 not fall within the plain language of the Vexatious Litigant Order, which specifically imposes a  
 22 pre-filing review requirement on Plaintiff for new “action[s]” and “complaint[s]” arising out of the  
 23 foreclosure of the Property. Vexatious Litigant Order at 21. Plaintiff’s motion to set aside the  
 24 *Sepehry-Fard II* judgment is neither a new action nor a complaint and thus does not fall within the  
 25 Vexatious Litigant Order. *See Inst. of Cetacean Research*, 774 F.3d at 945 (stating that contempt  
 26 consists of disobedience to a “specific and definite court order”). Nonetheless, the Court cautions

Plaintiff that another motion to set aside the judgment in any of the closed cases regarding the foreclosure of the Property may result in the expansion of the Vexatious Litigant Order to require pre-filing review of such motions.

Next, Countrywide and Recontrust contend that Plaintiff violated the Vexatious Litigant Order by filing motions in Plaintiff's bankruptcy proceeding. ECF No. 61, at 8. However, Countrywide and Recontrust offer no evidence that they were harmed by any motion filed in Plaintiff's bankruptcy proceeding. Countrywide and Recontrust specifically describe only one motion filed by Plaintiff in the bankruptcy proceeding. Defs. RJN Ex. 14. This motion was filed against SPS, not Countrywide or Recontrust, and there is no indication that Countrywide or Recontrust responded to the motion. *See id.* Further, although Countrywide and Recontrust state that they were forced to file a motion to quash a subpoena filed by Plaintiff, Countrywide and Recontrust do not describe the subpoena, the subpoena's relationship to the Property, or the disposition of the motion. Thus, the Court concludes that motions filed in Plaintiff's bankruptcy case do not warrant imposition of contempt sanctions. *See Castell v. Metro. Life Ins. Co.*, 2012 WL 986625, at \*4 (N.D. Cal. Mar. 22, 2012) (declining to impose contempt sanctions when "[the movant] has not demonstrated that he suffered any harm").

Viewing the record as a whole, the Court concludes that Plaintiff has willfully violated the Vexatious Litigant Order by: (1) filing, pursuing, and appealing an adversary proceeding related to the Property; and (2) filing, pursuing, and appealing a new complaint in federal court related to the foreclosure of the Property. There is no indication that Plaintiff's actions were based on a reasonable or good faith interpretation of the Vexatious Litigant Order. In fact, in the many filings currently before the Court, Plaintiff does not dispute that Plaintiff failed to comply with the Vexatious Litigant Order. *See* ECF Nos. 65, 66, 67, 74, 75, 77.

Plaintiff's only substantive response to the motion for contempt is that the Vexatious Litigant Order is void. *See* ECF No. 66. However, Plaintiff never appealed the Vexatious Litigant Order, and Plaintiff's current, untimely challenge to the validity of the Vexatious Litigant Order



1 does not excuse Plaintiff's failure to comply with the order. It is a "long-standing rule that a  
2 contempt proceeding does not open to reconsideration the legal or factual basis of the order  
3 alleged to have been disobeyed and thus become a retrial of the original controversy." *United*  
4 *States v. Rylander*, 460 U.S. 752, 756 (1983) (quoting *Maggio v. Zeitz*, 333 U.S. 56, 69 (1948)).  
5 In addition, for the reasons discussed above, Plaintiff is not entitled to relief from the Vexatious  
6 Litigant Order under Federal Rule of Civil Procedure Rule 60. Thus, Plaintiff's disagreement with  
7 the Vexatious Litigant Order does not excuse Plaintiff's repeated disregard of that order.

8 Given Plaintiff's willful violation of the Vexatious Litigant Order, and Plaintiff's lack of  
9 legally viable bases for refusing to comply with the order, the Court finds Plaintiff in civil  
10 contempt. The Court thus must decide on an appropriate sanction.

11 "Sanctions for civil contempt may be imposed to coerce obedience to a court order, or to  
12 compensate the party pursuing the contempt action for injuries resulting from the contemptuous  
13 behavior, or both." *Gen. Signal Corp.*, 787 F.2d at 1380. "Compensatory awards are limited to  
14 actual losses sustained as a result of the contumacy." *Id.* (international quotation marks and  
15 emphasis omitted). Countrywide and Recontrust argue that they have suffered actual losses  
16 because they were forced to file the present motion and forced to defend against Plaintiff's  
17 improper lawsuits. Countrywide and Recontrust seek the attorney's fees and costs that they  
18 incurred defending against the suits filed in violation of the Vexatious Litigant Order.<sup>3</sup> ECF No.  
19 61. Such fees and costs "are an appropriate component of a civil contempt award." *In re Dyer*,  
20 322 F.3d 1178, 1195 (9th Cir. 2003). Accordingly, the Court will award sanctions in the amount  
21 of reasonable attorney's fees and costs that Countrywide and Recontrust expended to litigate the  
22 instant motion, as well as to defend against Plaintiff's adversary proceeding and appeal, and to  
23 defend against Plaintiff's new federal court case.

24  
25 <sup>3</sup> In the motion for contempt, Countrywide and Recontrust originally requested daily monetary  
26 sanctions until Plaintiff dismissed the appeal of any action filed in violation of the Vexatious  
27 Litigant Order. ECF No. 61, at 9. Because the majority of Plaintiff's appeals have been resolved,  
Countrywide and Recontrust now seek only attorney's fees and costs. ECF No. 76.

To support the request for attorney's fees and costs, on August 5, 2016, Countrywide and Recontrust submitted records of their attorney's time. ECF No. 76. However, Countrywide's and Recontrust's attorney fails to explain his educational background or practice experience and thus fails to justify the requested hourly rate of pay. *See Carson v. Billings Police Dep't*, 470 F.3d 889, 891 (9th Cir. 2006) (noting that the party seeking attorney's fees bears the burden of demonstrating the reasonableness of the requested rates). Within ten days after the date of this order, Countrywide and Recontrust shall submit a proposed order awarding reasonable attorney's fees and costs. The proposed order shall be supported by an affidavit of counsel and any necessary documents supporting a narrow and reasonable request for attorney's fees and costs. Within seven days after the submission of Countrywide and Recontrust, Plaintiff shall file any objection to the documentation of attorney's fees and costs. Thereafter, the matter will be submitted without further oral argument.

### **C. Plaintiff's Motion to Recuse**

The Court next addresses Plaintiff's motion to recuse. ECF No. 67. Motions to recuse a judge from presiding in a given case fall under two statutory provisions: 28 U.S.C. § 144 and 28 U.S.C. § 455. *See United States v. Sibla*, 624 F.2d 864, 867 (9th Cir. 1980). Section 144, the provision cited by Plaintiff here, provides for recusal where a party files a timely and sufficient affidavit averring that the judge before whom the matter is pending has a personal bias or prejudice either against the party or in favor of an adverse party, and setting forth the facts and reasons for such belief. 28 U.S.C. § 144. Under section 144, "the substantive standard is whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." *Pesnell v. Arsenault*, 543 F.3d 1038, 1043 (9th Cir. 2008) (alteration and internal quotation marks omitted), *abrogated on other grounds by Simmons v. Himmelreich*, 136 S. Ct. 1843 (2016). "A party may file only one such affidavit in any case." 28 U.S.C. § 144.

Plaintiff has already filed one motion in the instant case seeking to recuse the undersigned

pursuant to § 144.<sup>4</sup> ECF No. 32 (motion to recuse filed February 2, 2015).<sup>5</sup> The Court denied Plaintiff's motion on March 10, 2015 because "Plaintiff provides no basis for a reasonable observer to find that the undersigned has displayed any bias or prejudice stemming from an extrajudicial source." ECF No. 58. Now, over a year after that denial and the dismissal of Plaintiff's claims, Plaintiff moves again to recuse the undersigned under § 144. ECF No. 67. Because Plaintiff may only move to recuse a judge under § 144 once per case, the instant motion to recuse is procedurally improper. *See* 28 U.S.C. § 144.

Further, Plaintiff fails to establish any basis to conclude that the Court's "impartiality might reasonably be questioned." *Pesnell*, 543 F.3d at 1043. Plaintiff alleges vaguely that the undersigned has engaged in forms of "misconduct . . . too many to list here" and asserts that the undersigned has "stolen monies and properties from Plaintiff" with "financial partner" U.S. District Judge Edward Davila. ECF No. 67, at 1, 3. Plaintiff's speculative assertions are insufficient to justify recusal. *See United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 566 (9th Cir. 1995) (holding that "conclusory allegations" are "insufficient to support a claim of bias or prejudice such that recusal is required"). In addition, Plaintiff can not seek the undersigned's recusal based on Court rulings with which Plaintiff disagrees. *See United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986) ("[A] judge's prior adverse ruling is not sufficient cause for recusal."). Finally, Plaintiff's attempts to sue and subpoena the undersigned do not provide a basis for recusal. *Id.* at 940 ("A judge is not disqualified by a litigant's suit or threatened suit against him."). Accordingly, Plaintiff's motion to recuse is DENIED.

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<sup>4</sup> Plaintiff has made other allegations of judicial bias against the undersigned. The undersigned has presided over two additional foreclosure-related lawsuits filed by Plaintiff. In appealing the undersigned's order in one of those cases, Plaintiff also alleged that the undersigned was biased. The Ninth Circuit expressly "reject[ed] as without merit [Plaintiff's] contentions concerning alleged judicial bias." *Sepehry-Fard v. Bank of N.Y. Mellon, N.A.*, 588 Fed. App'x 685, 686 (9th Cir. 2014).

<sup>5</sup> Plaintiff filed an identical motion to recuse on February 4, 2015. ECF No. 37. In the Vexatious Litigant Order, the Court treated the identical motions to recuse as one motion. Vexatious Litigant Order at 6, 10–12.

#### **D. Plaintiff's Motion to Confirm Jurisdiction**

Plaintiff has filed an administrative motion to “confirm jurisdiction and to confirm jurisdiction over alleged Defendants.” ECF No. 75. This motion is frivolous. The Court dismissed Plaintiff’s claims on March 10, 2015, *see* ECF No. 58, and Plaintiff did not appeal. Because the case has already been dismissed, Plaintiff may not move to dismiss the case based on lack of jurisdiction. Further, *Plaintiff* invoked the jurisdiction of this Court by choosing to file the complaint in this Court. *See* ECF No. 1, ¶¶ 4–6, 8–11, 67 (“This court’s jurisdiction is invoked as is found by reference at 28 USC § 1331. . . .”). The Court exercised federal question jurisdiction because Plaintiff brought causes of action pursuant to federal statutes, and exercised supplemental jurisdiction over Plaintiff’s related state law causes of action. *See* ECF No. 1 (Complaint), ¶ 11 (asserting claims under, for example, the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.*). Accordingly, there was a clear basis for subject matter jurisdiction over the instant case. *See* 28 U.S.C. §§ 1331, 1367. In addition, Plaintiff lacks the power to decide whether this Court has jurisdiction. *See* ECF No. 75, at 2 (Plaintiff claiming that “it will be considered tacit admission this Court lacks proper jurisdiction” if the Court does not confirm jurisdiction within 15 days). Accordingly, the Court DENIES Plaintiff’s motion to confirm jurisdiction.

#### **E. Filing of Motions in This Case**

This case was closed on March 10, 2015. No appeal was filed, and the time to appeal passed over one year ago. However, five motions were filed in May and June 2016. *See* ECF Nos. 61, 65, 66, 67, 75. The briefing and exhibits submitted for these five motions totaled over 1750 pages and, as discussed above, Plaintiff’s four motions were meritless. These voluminous, frivolous filings strain the limited resources of the Court. Accordingly, it is hereby ORDERED that prior to filing any motion before the undersigned judge in this case, the moving party shall file an administrative motion seeking leave to do so. Any such motion for leave shall be no more than three (3) pages and shall summarize the proposed motion. No response to the administrative

motion shall be filed. If the Court grants leave to file the proposed motion, the moving party shall do so in compliance with the Court's Civil Local Rules. If leave is denied, then the proposed motion can not be filed.

#### IV. CONCLUSION

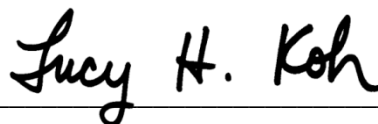
For the foregoing reasons, the Court hereby rules as follows:

- The Court DENIES Plaintiff's motion for relief from judgment under Federal Rule of Civil Procedure 60;
- The Court DENIES Plaintiff's motion to strike the motion for contempt;
- The Court GRANTS Countrywide's and Recontrust's motion for contempt;
- The Court DENIES Plaintiff's motion to recuse the undersigned;
- The Court DENIES Plaintiff's motion to confirm jurisdiction; and
- The Court ORDERS that prior to filing any motion before the undersigned judge in this case, the moving party shall file an administrative motion seeking leave to do so.

Within ten days after the date of this order, Countrywide and Recontrust shall submit a proposed order awarding reasonable attorney's fees and costs as described in Section III.B.2 above. Within seven days after the submission of Countrywide and Recontrust, Plaintiff shall file any objection to the documentation of attorney's fees and costs. Thereafter, the matter will be submitted without further oral argument.

**IT IS SO ORDERED.**

Dated: August 23, 2016



LUCY H. KOH  
United States District Judge